An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-408

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

STATE OF NORTH CAROLINA

v.

DARION RENARD DRUMMOND,
Defendant-Appellant

Forsyth County
Nos. 99 CRS 53783
00 CRS 12499

Appeal by defendant from judgment entered 22 January 2001 by Judge Judson D. DeRamus, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 14 January 2002.

Attorney General Roy Cooper, by Assistant Attorney General Donald W. Laton, for the State.

Christopher R. Clifton for defendant-appellant.

BRYANT, Judge.

Defendant Darion Renard Drummond was charged with possession of cocaine and having attained the status of habitual felon. Prior to trial, defendant filed a motion to suppress the evidence seized from his person by Officer Paul Felske on 4 December 1999. This matter was heard by Judge William H. Freeman in Forsyth County Superior Court on 10 October 2000.

The State's evidence tended to show that after midnight on 4 December 1999, Officer Felske, of the Winston-Salem Police Department, was on routine foot patrol in the 1600 block of North

Patterson Avenue in Winston-Salem, North Carolina. Officer Felske was preparing to check on an abandoned house on Patterson Avenue, when he heard three gunshots coming from across the street in an apartment complex. In response, the officer went to investigate and observed a person limping down a path to North Chestnut Street. Officer Felske also radioed communications to detail the person's direction of travel and to request an ambulance in case the subject required medical attention.

When Officer Felske came out at Chestnut Street, Officer Joshua Henry had just stopped defendant who had been shot. Defendant's hands were in the air, and Officer Henry was holding his gun on defendant. At this point, Officer Henry had not searched or talked with defendant. Officer Felske then approached defendant and asked him if he had any drugs or weapons on his person. Defendant answered, "no." Officer Felske next commented on defendant's injury and told defendant that an ambulance was en route. Finally, the officer asked defendant for permission to search him, to which defendant said, "go ahead," with his hands still in the air.

Officer Felske initially performed a pat down for weapons, and then conducted a more thorough search of defendant's person. During the officer's more thorough search, he located a small rock of crack cocaine weighing about 20 grams, in defendant's right front pant's pocket, and a crack pipe and packing stem in defendant's left front shirt pocket. Officer Felske did not place defendant under arrest at this time, as the ambulance arrived and

defendant was taken to the hospital for treatment. Another officer rode with defendant to the hospital to take his statement in regard to who shot him, and Officer Felske proceeded to the magistrates' office to have warrants drawn for defendant's arrest for the drug-related charge(s). Officer Henry was unable to remember if defendant consented to the search by Officer Felske.

Defendant testified that he never gave Officer Felske permission to search him. In fact, defendant gave quite a different accounting of the incident. Defendant stated that he did not remember Officers Felske and Henry being present. Instead, defendant says he flagged down and talked to Officer Mike Poe, whom he knew from previous encounters. Defendant was quite equivocal during his testimony regarding whether the drugs and contraband seized were even his. He stated that he did not "remember" having any drugs on him. Defendant disputed the officers' testimony that the ambulance arrived just minutes after they searched defendant.

After hearing the evidence and arguments of counsel, Judge Freeman made findings and conclusions in open court, and denied the motion to suppress. We note that the court's decision was never reduced to a written order. Upon preserving his right to appeal the trial court's denial of his motion to suppress, defendant pled guilty as charged. In accordance with his plea agreement, defendant was sentenced to a mitigated sentence as a Class C Felon to 80-105 months imprisonment. Defendant appeals the trial court's denial of his motion to suppress.

On appeal, defendant argues first that the trial court erred

in denying his motion to suppress. Specifically, defendant contends that the motion should have been allowed, because there was not sufficient evidence to support the trial court's finding and conclusion that he consented to the 4 December 1999 search of his person.

This Court's review of a trial judge's ruling on a suppression motion is limited to determining "whether the trial court's findings of fact are supported by competent evidence, and whether these findings of fact support the court's conclusions of law." *State v. Pulliam*, 139 N.C. App. 437, 439-40, 533 S.E.2d 280, 282 (2000). Here, defendant does not challenge the original, investigatory stop and pat down conducted by police officers after they observed him limping away from a location where three shots were heard. *See Terry v. Ohio*, 392 U.S. 1, 21-22, 20 L. Ed. 2d 889, 906 (1968) (permitting a investigatory stop and pat down for weapons based upon a reasonable suspicion, based on objective facts that criminal activity is afoot). He challenges only the search of his person that was subsequently conducted after the initial stop and pat down.

It is well settled that a search conducted pursuant to a person's voluntary consent does not offend the Fourth Amendment's prohibition against unreasonable searches and seizures. *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997). Moreover, section 15A-221 of our General Statutes specifically provides that a law enforcement officer may conduct a search and make seizures, without a search warrant or other authorization, so long as

voluntary consent to the search is given. *See* N.C.G.S. § 15A-221(b) (1999). "'[T]he question whether a consent to a search was in fact "voluntary" or was the product of duress or coercion, expressed or implied, is a question of fact to be determined from the totality of all of the circumstances.'" *State v. Brown*, 306 N.C. 151, 170, 293 S.E.2d 569, 582 (citation omitted).

At the suppression hearing, Officer Felske testified that defendant expressly gave consent to be searched. Defendant testified to the contrary. Notably, there were no claims, nor indeed, evidence of duress or coercion. The trial court, as fact finder, properly resolved the issue of credibility. *See State v. Bromfield*, 332 N.C. 24, 36, 418 S.E.2d 491, 497 (1992), *habeas corpus dismissed by Bromfield v. Freeman*, 923 F. Supp. 783 (E.D.N.C. 1996), *appeal dismissed by* 121 F.3d 697 (4th Cir. 1997) (stating that "[i]nconsistencies or conflicts in the testimony *do not necessarily* undermine the trial court's findings, since such contradictions in the evidence are for the finder of fact to resolve[]"); *State v. Fisher*, 141 N.C. App. 448, 451, 539 S.E.2d 677, 680 (2000) (noting that the trial court's resolution of inconsistencies or conflicts in the testimony will not be disturbed on appeal), *appeal dismissed and review denied by* 353 N.C. 387, 547 S.E.2d 420 (2001). The trial court made the following factual findings:

> [O]n or about the date in question Officer Felske of the Winston-Salem Police Department was on routine foot patrol . . . . That he heard three gunshots across the street near an apartment complex. That he ran over to that complex. That he saw a silhouette of a man

> going through a cut that went through to the 1600 block of Chestnut Street. That he found two Hispanic gentlemen on the scene and that he observed the silhouette limp through the cut toward Chestnut Street.
>
> That he sent out a radio broadcast with a brief description of the person going through the cut and requested back-up and emergency medical service. That he then proceeded to go through the cut. [T]hat when he arrived [on Chestnut Street], Officer Henry was already in the presence of the defendant.
>
> That he asked Mr. Drummond if he had any drugs or weapons and he said no. [Defendant] indicated that he had been shot in the leg. That he asked permission to search for weapons and/or drugs and the defendant consented to that search and he thereupon searched the defendant and found a small rock of cocaine in his front pocket and some drug paraphernalia.

We conclude that the trial court had before it sufficient evidence from which it could determine that defendant voluntarily consented to the search of his person on 4 December 1999. The trial court's findings show that the inconsistencies between Officer Fleske's testimony and that of defendant were resolved in favor of the State. The trial court's resolution should not be disturbed by this Court on appeal. Further, based upon the trial court's findings, the trial court properly concluded that defendant voluntarily consented to the search of his person.

Having so concluded, we need not address defendant's second argument that the search of his person, absent consent, exceeded the permissible bounds of a *Terry* pat down and was therefore unlawful. In light of the foregoing, we hold the trial court did not err in denying defendant's motion to suppress. Accordingly, the judgment of the court is affirmed.

Affirmed.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).